IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2445 OF 2005

Chindhu Shanka Thakar ..Petitioners

Versus

Nathu Bhagu Thakar and Ors. ....Respondents

R.B.Deshmukh h/f. Vilas B.Tapkir for the petitioners.

Piyush Shah for respondent nos.1 to 6.

**CORAM: S.C.DHARMADHIKARI, J.**

**10th December, 2007.**

**P.C. :**

1. Heard Mr.Tapkir appearing for the petitioners, and perused the impugned order refusing to condone the delay of three years and ten days in filing of Regular Civil Appeal.

2. The lower appellate court has observed that the application is vague. The plea therein that the Advocate has misled the petitioner has not been

substantiated, inasmuch as, the particulars including the name of the Advocate have not been set out. Further, it is brought on record that the present petitioner had attended the Trial Court proceedings. It is not as if he was totally unaware of a Suit being filed against him . In such circumstances, refusal of the lower appellate court to exercise discretion in favour of a litigant who has approached it belatedly and has not set out any reason or cause for not preferring the appeal within time cannot said to be arbitrary or capricious exercise of discretionary power. In such circumstances, there is no reason to interfere. Petition is dismissed. No order as to costs.

2. In the light of the dismissal of the petition, Civil Application No.2976 of 2006 does not survive and is accordingly disposed off.

sd/-

*********